

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020  
Attn: City Manager



Mar 02, 2018 11:25 AM  
OFFICIAL RECORDS  
Ernest J. Dronenburg, Jr.,  
SAN DIEGO COUNTY RECORDER  
FEES: \$0.00 (SB2 Atkins: \$0.00)

PAGES: 19

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This document is exempt from the payment of a recording  
fee pursuant to Government Code Section 27383.

## OPERATING COVENANT

**THIS OPERATING COVENANT** ("Operating Covenant") is made this 28<sup>th</sup> day of February 2018, 2017 (the "Effective Date"), by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the "City"), and **OREMOR EUROPEAN, LLC**, a California limited liability company doing business as **MERCEDES-BENZ OF EL CAJON**, (the "Operator"), with reference to the following:

A. The Operator leases the land ("Land"), which leasehold interest shall hereafter be referred to as the "Property," more fully described in Exhibit "A," which is attached hereto.

B. The Operator is in the final stages of constructing a high-class Mercedes-Benz automobile dealership on the Property (the "MB Dealership"), said construction conducted at the sole cost and expense of Operator with no financial or other assistance from the City, and the City has agreed to provide the Operator with certain financial incentives in consideration of Operator agreeing to use and operate the Property and the MB Dealership, all in accordance with this Operating Covenant.

C. This Operating Covenant shall be recorded against the Property to memorialize certain covenants, conditions, and restrictions regarding the use and operation of the Property by the Operator and the Operator's successors and assigns.

D. The City has fee interests in parks, City Hall, and in various streets, sidewalks, and other property within the City, more particularly described in Exhibit "B" (collectively, the "Benefited Public Property"), and is responsible for planning of land uses within the City in such a manner as to provide for the health, safety, and welfare of the residents of the City.

NOW, THEREFORE, Operator hereby covenants, agrees, and declares by and for itself and its successors and assigns that the Property shall be held, sold, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, and restrictions (sometimes collectively referred to hereinafter as the "Covenants"). These Covenants shall run with the Property and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof and shall inure to the benefit of the City and its successors and assigns regardless of whether the City holds any interest in any real property benefited thereby.

**1. Covenant Regarding Specific Uses.**

(a) Operation of MB Dealership. For a term (the "Term") commencing upon the City's issuance of a certificate of occupancy by the City (the "Occupancy Permit") allowing the commencement of operations of the MB Dealership and continuing until the tenth (10<sup>th</sup>) anniversary of the date of the Occupancy Permit for the MB Dealership (the "Operating Covenant Termination Date"), the Operator hereby covenants and agrees to devote the Property for the exclusive purpose, use and operation of the MB Dealership, and will comply with the other obligations contained herein. Notwithstanding anything herein to the contrary, the nondiscrimination covenants contained in subdivision (a) of Section 4 hereof shall run with the Property in perpetuity and shall not terminate on the Operating Covenant Termination Date. Except as provided below, or with the prior written consent of the City for each instance, which consent may be granted or withheld in the City's sole and absolute discretion, the failure of the Operator (or its tenant) to operate any portion of the MB Dealership on the Property as required herein for thirty (30) or more consecutive days shall, at the City's option, constitute a default hereunder; provided, however, that the Operator shall for purposes of this Section 1 be deemed to be operating such portion of the MB Dealership during any period that the Operator is prevented from operating such portion due to: (i) required or necessary rehabilitation of such portion of the MB Dealership (provided that the period during which such portion of the MB Dealership is not operated as a result of the rehabilitation shall in no event exceed thirty (30) days), unless the rehabilitation cannot reasonably be completed within such thirty (30) day period, in which case the period may extend as necessary for completion, provided such rehabilitation was commenced within the thirty (30) day period and is diligently pursued to completion, but in no event shall rehabilitation efforts exceed 180 days; or (ii) war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City or other public or governmental entity. Notwithstanding anything to the contrary herein, (a) an extension of time for any cause listed in romanette (ii) above shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Operator is sent to the other party within ten (10) days of the commencement of the cause, and (b) the Operator is not entitled pursuant to this Section 1 to an extension of time to perform because of past, present, or future difficulty in obtaining financing necessary to operate the MB Dealership because of economic or market conditions.

(b) Subject to Section 1(a), in operating the MB Dealership during the Term, Operator:

(1) Shall operate in accordance with all requirements of Mercedes-Benz, which shall include operating the dealership as a first-class motor vehicle dealership in compliance with all facility and image requirements of Mercedes-Benz;

(2) Shall use all chemicals, unhealthful substances, and pesticides in strict accordance with all governing regulations, and shall employ precautionary measures recognizing that areas are open to public access.

(3) Shall keep all sidewalks, paths and other paved areas of the MB Dealership in clean and weed-free condition, free of excess dirt and mud, trash, debris or other

matter which is unsafe or unsightly; remove all trash, litter and other debris from improvements and landscaping of the MB Dealership prior to mowing; ensure that all cuttings, weeds, leaves and other debris at the of the MB Dealership are properly disposed of.

(4) Shall, in performing the forgoing, conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of same.

2. **[Intentionally deleted.]**

3. **Failure to Operate Property.** In the event the Operator does not operate the Property in the manner set forth herein and in accordance with Section 1(a), above (the "Operation Standards"), the City shall notify the Operator in writing if the operation of the Project or Property does not meet with the Operation Standards and to specify the deficiencies and the actions required to be taken by the Operator to cure the deficiencies. Upon notification of any operation deficiency, the Operator shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City, then the Operator shall have forty-eight (48) hours to rectify the problem.

In the event the Operator fails to correct, remedy, or cure (or for deficiencies which cannot reasonably be corrected, remedied, or cured within thirty (30) days has failed to commence correcting, remedying or curing such operation deficiency and diligently pursue such correction, remedy, or cure to completion) after notification and after the period of correction has lapsed, then the parties agree that the City shall not be required to reimburse any portion of sales taxes generated from the Property (as set forth in Section 7, below, and in Exhibit "C" hereof) during the period of Operator's default in its covenant to comply with the Operation Standards and any subsequent calculation for reimbursement shall treat any such sales as having not occurred.

4. **Compliance with Law.** The Operator shall comply with all local, state and federal laws relating to the uses of or condition of the Property and the MB Dealership. The operation of the MB Dealership shall be in compliance with the requirements of any entitlements issued by the City for the MB Dealership, including, as applicable, a conditional use permit, site development permit, and specific plan amendment.

(a) **Nondiscrimination Covenants.** The Operator covenants, by and for itself and any successors in interest to all or any portion of the Property, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Operator itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the Property. The foregoing covenants shall run with the land.

The Operator shall refrain from restricting the rental, sale or lease of the Property any portion thereof on the basis of race, color, religion, sex, sexual preference, marital status, ancestry or national origin of any person. All such deeds, leases or contracts entered into after the Effective Date shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants, by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(3) In contracts: "There shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

(b) No Violation of Statutes Relating to Direct Assistance by City. The Operator represents and warrants that it is using the City financial assistance for the sole and exclusive purpose of operation costs and the stabilization of operational costs of the MB Dealership, and for no other purpose. The Operator further agrees to indemnify, defend, and hold harmless the City from and against any claims, proceedings, losses, costs, or expenses incurred as a result of any third-party claims or proceedings resulting from such violation arising out of actions by the Operator related to the provision of the financial assistance.

**5. Sales and Use Tax Covenant.** From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, the Operator shall designate the Property as the point of sale for sales tax purposes for all goods and services sold or leased on the Property, whose sales and leases originate from the Property.

**6. Covenant to Pay Taxes and Assessments.** From the date this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, the Operator shall pay or cause to be paid, prior to delinquency, all ad valorem real estate taxes (including possessory interest taxes), special taxes, and assessments levied against the Property and any improvements thereon, subject to the Operator's right to contest any such tax or

assessment in good faith. During such period, the Operator shall remove or have removed any levy or attachment made on the Property or any part thereof or assures the satisfaction thereof within a reasonable time and prior to a sale of the Property.

**7. City Reimbursement of Portion of Sales Taxes Generated.**

In consideration of the use and operation of the MB Dealership as set forth in this Operating Covenant, and in recognition of the significant commitment of capital and other resources by the Operator for the MB Dealership, City hereby agrees to provide, as an incentive, the reimbursement of a portion of sales taxes generated from the Property for a limited period of time. The precise calculation of reimbursement by City, to Operator, is set forth in the City Reimbursement Schedule, attached to this Operating Covenant as Exhibit "C" and incorporated herein by this reference.

**8. Defaults.**

(a) Failure or delay by either party to perform any term or provision of this Operating Covenant, subject to applicable cure periods, constitutes a default under this Operating Covenant. A party claiming a default shall give written notice of default to the other party, specifying the default complained of and the actions required to correct such default.

(b) Unless otherwise provided by this Operating Covenant, the claimant shall not institute proceedings against the other party if the other party, within thirty (30) days from receipt of such notice, immediately and with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy as soon as reasonably practicable after receipt of such notice, but in no event shall the cure, correction or remedy occur more than one hundred eighty (180) days after notice.

**9. Legal Actions.**

(a) In addition to any other rights or remedies, and subject to the notice and cure provisions in Sections 1(a) and 8 above, any party may institute legal action to seek specific performance of the terms of this Operating Covenant, or to cure, correct or remedy any default, or to obtain any other legal or equitable remedy consistent with the purpose of this Operating Covenant. The parties shall also have the right to pursue damages for the other party's defaults, but in no event shall the City or Operator be entitled to special damages of any kind from the other party, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California or in the Federal District Court in the Southern District of California. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other reasonable costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

(b) The internal laws of the State of California shall govern the interpretation and enforcement of this Operating Covenant, without regard to conflict of laws.

(c) In the event that any legal action is commenced by the Operator against the City in connection with this Operating Covenant, service of process on the City shall be

made by personal service upon the City Clerk of the City in addition to such other manner as may be provided by law.

(d) In the event that any legal action is commenced by the City against the Operator, service of process on the Operator shall be made by personal service upon any officer or director of the Operator, whether made within or outside the State of California, or in such other manner as may be provided by law.

(e) Except as otherwise expressly stated in this Operating Covenant, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

(f) Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

#### **10. Effect of Violation of the Terms and Provisions of this Operating Covenant.**

The covenants established in this Operating Covenant shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, and its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. The City is deemed the beneficiary of the terms and provisions of this Operating Covenant and of the covenants running with the Property, for and in their own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Operating Covenant and the covenants running with the land have been provided. This Operating Covenant and the covenants shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Property. The City shall have the right, if the Operating Covenant or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which they or any other beneficiaries of this Operating Covenant and covenants may be entitled. Pursuant to applicable law, including, but not limited to, sections 1462, 1465 and 1468 of the Civil Code of the State of California, all provisions of this Operating Covenant shall run with the Property and be binding upon and inure to the benefit of the Benefited Public Property and the Property and each and every portion thereof or interest therein, and all parties having or acquiring any right, title, or interest in the Property or any portion thereof, and their successors and assigns.

#### **11. Transfer Restrictions.**

(a) The qualifications and identity of the Operator are of particular concern to the City. It is because of these qualifications and identity that the City has entered into this Operating Covenant with the Operator. Accordingly, commencing on the effective date of this Operating Covenant and continuing throughout its term: (i) no voluntary or involuntary successor in interest of the Operator shall acquire any rights or powers under this Agreement; (ii) the Operator shall not make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing, or lease of the whole or any part of the Property

or the MB Dealership thereon; and (iii) no changes shall occur with respect to the majority ownership and/or control of the Operator, including, without limitation, stock transfers, sales of issuances, or transfers, sales of issuances of membership or ownership interests, or statutory conversions (with each of the actions in clauses (i), (ii), and (iii) above, referred to herein as a "Transfer"), without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed. Any purported Transfer, voluntarily or by operation of law, except with the prior written consent of the City, shall be null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

(b) Notwithstanding any other provision of this Operating Covenant to the contrary, the City's approval of a Transfer shall not be required in connection with any of the following:

(i) Any Transfer by the Operator to a "Related Person or Entity" (as defined below).

(ii) A Transfer consisting of the conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency, including public utilities, where the granting of such easements permits or facilitates the development of the Land and the MB Dealership.

(iii) Any transfer for (1) financing purposes to the holder of a mortgage; (2) any refinancing or permanent financing of the mortgage; (3) any Transfer to any person or entity pursuant to foreclosure or deed in lieu of foreclosure of any such mortgage referred to in clauses (1) or (2).

In the event of a Transfer by Operator not requiring the City's prior approval, Operator nevertheless agrees that at least thirty (30) days prior to such Transfer, Operator shall give written notice to the City of such Transfer. In the case of a Transfer pursuant to subparagraph (i) above, Operator agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the transferee has assumed, or upon the effective date of transfer will assume, in writing through an assignment and assumption agreement, in form reasonably acceptable to the Agency, all of the obligations of the Operator under this Agreement which remain unperformed as of such Transfer or which arise from and after the date of Transfer.

As used in this Agreement, a "Related Person or Entity" shall mean an entity in which Operator, or an entity in which Operator or any of Operator's members, own a greater than fifty percent (50%) ownership and management interest, has a greater than fifty percent (50%) ownership and management interest; provided, however, that such Related Person or Entity shall demonstrate that such person or entity has been approved in writing by Mercedes-Benz to operate the MB Dealership thereon.

(c) If the Operator desires to cause a Transfer of any of its interests in this Operating Covenant or the Property, and such Transfer requires the City's approval under Section 11(a), Operator shall request in writing to the City that it consent to such Transfer, which consent shall not be unreasonably delayed or withheld. Notwithstanding any other provision set forth in this Operating Covenant, a Transfer which satisfies the following conditions shall automatically be deemed approved by the City: (i) the proposed assignee expressly assuming, in writing, the unexecuted obligations hereunder of the transferor/assignor, as applicable, as to times following the effective date of the assignment; and (ii) the proposed assignee

demonstrating to the reasonable satisfaction of the Agency that such person or entity has adequate financial capacity to operate the MB Dealership on the Land and that such person or entity has been approved in writing by Mercedes-Benz to operate the MB Dealership thereon.

Notwithstanding any other provision set forth in this Operating Covenant to the contrary, upon the effective date of a permitted or approved Transfer, and provided that the transferor/assignor shall have delivered to the City an executed assignment and assumption agreement in form reasonably acceptable to City legal counsel, the transferor/assignor shall be released from all further liabilities and obligations hereunder and the Operating Covenant that have been so transferred and assigned.

(d) All of the terms, covenants and conditions of this Operating Covenant shall run with the Property and be binding upon the Operator and the City and their permitted successors and assigns. Whenever the term "Operator" or "City" is used in this Operating Covenant, such term shall include any other permitted successors and assigns.

**12. Miscellaneous Provisions.**

(a) If any provision of this Operating Covenant or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Operating Covenant, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Operating Covenant; and each provision of this Operating Covenant shall be valid and enforceable to the fullest extent permitted by law.

(b) This Operating Covenant shall be construed in accordance with the internal laws of the State of California without regard to conflict of law principles.

(c) This Operating Covenant shall be binding upon and inure to the benefit of the successors and assigns of the Operator but any Transfer shall be subject to the requirements and provisions of Section 11 of this Operating Covenant.

**12. Notices.** All notices under this Operating Covenant shall be effective: (i) upon personal delivery; (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery; or (iii) via facsimile or electronic mail, so long as the sender receives confirmation of successful transmission from the sending machine or computer; provided that a copy of the notice is also concurrently sent by first class mail, and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To City:

City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1716  
Attention: Douglas Williford, City Manager



With a copy to: El Cajon City Attorney  
200 Civic Center Way  
El Cajon, CA 92020  
Phone No.: 619-441-1798  
Attention: Morgan L. Foley, Esq.

To Operator: Mercedes-Benz of El Cajon  
1111 Wagner Drive  
El Cajon, CA 92020  
Phone No.: 951-318-2287  
Attention: Valerie Romero, Owner

With a copy to: Oremor Automotive Group  
1377 Kettering Loop  
Ontario, CA 91761  
Phone No.: 909-563-7703  
Attn: Richard J. Romero

Manning, Leaver, Bruder & Berberich  
5750 Wilshire Blvd. Suite 655  
Los Angeles, CA 90036  
Phone No.: (323) 937-4730  
Attention: Penny L. Reeves, Esq. & Wade Kackstetter, Esq.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto has executed this instrument the day and year first hereinabove written.

"Operator"

**MERCEDES-BENZ OF EL CAJON,**  
a California corporation


Date: 1/29/18 ~~2017~~

By: \_\_\_\_\_  
Its: \_\_\_\_\_


"City"

**CITY OF EL CAJON,**  
a charter city and municipal corporation

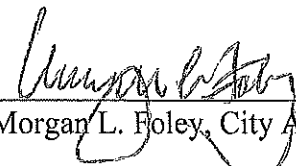
Date: 2/28/18 ~~2017~~

By:   
Douglas Williford, City Manager

ATTEST:

  
Daryl A. Betancour, MRA, MMC, City Clerk  
Angela Aguirre

APPROVED AS TO FORM:

  
Morgan L. Foley, City Attorney





**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

All that property located in the City of El Cajon, County of San Diego, State of California, described as follows:

**APN 482-190-54**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EL CAJON, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT CERTAIN REAL PROPERTY PURSUANT TO THE LOT LINE ADJUSTMENT NO. 207, AS DISCLOSED BY A DOCUMENT RECORDED JANUARY 21, 2000 AS INSTRUMENT NO. 2000-0033072 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTHERLY 100 FEET OF THE SOUTHERLY 210 FEET OF LOT 11 IN BLOCK 28 OF FLETCHER HILLS UNIT NO. 2, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 2122, FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 31, 1928.

EXCEPT THE EASTERLY 5 FEET THEREOF.

ALSO EXCEPT THE WESTERLY 192 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE INTEREST AS CONVEYED TO THE CITY OF EL CAJON BY DEED RECORDED JUNE 25, 1973 AS INSTRUMENT NO. 73-173469 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONDEMNED IN FEE BY THE SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD AND DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED JANUARY 14, 1994 AS INSTRUMENT NO. 94-0032012 OF OFFICIAL RECORDS AND AMENDED ORDER RECORDED FEBRUARY 28, 1994 AS INSTRUMENT NO. 94-0130978 OF OFFICIAL RECORDS.

TOGETHER WITH:

LOTS 10 AND 11 IN BLOCK 28 OF FLETCHER HILLS UNIT NO. 2, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 2122, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 31, 1928.

EXCEPTING FROM SAID LOTS 10 AND 11 THE WESTERLY 192.00 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE SOUTHERLY 210.00 FEET OF SAID LOT 11.

ALSO EXCEPTING THEREFROM THE EASTERLY 5.00 FEET OF SAID LOTS 10 AND 11.

ALSO EXCEPTING THEREFROM THE NORTHERLY 32.51 FEET OF SAID LOT 10.

ALSO EXCEPTING THAT PORTION OF SAID LOT 10 LYING NORTHEASTERLY OF THE ARC OF A 25.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY AND BEING TANGENT TO THE WESTERLY LINE OF THE EASTERLY 5.00 FEET OF SAID LOT AND TANGENT TO THE SOUTHERLY LINE OF THE NORTHERLY 32.51 FEET OF SAID LOT.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THAT CERTAIN 50.00 FOOT STRIP OF LAND DESCRIBED IN DEED TO THE CITY OF SAN DIEGO DATED MAY 21, 1946 AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AUGUST 19, 1946 IN BOOK 2214, PAGE 182 OF OFFICIAL RECORDS AS FOLLOWS:

ALL OF PORTIONS OF LOTS 8, 9, 10 AND 11 AND IN BLOCK 28 OF FLETCHER HILLS UNIT NO. 2, ACCORDING TO MAP THEREOF NO. 2122, LYING WITHIN A STRIP OF LAND 50.00 FEET IN WIDTH, BEING 33.00 FEET AT RIGHT ANGLES NORTHWESTERLY FROM AND 17.00 FEET AT RIGHTS ANGLES SOUTHEASTERLY FORM A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF LOT 21 IN BLOCK 26 OF SAID FLETCHER HILLS UNIT NO. 2, DISTANT THEREON SOUTH 89°50'00" EAST MAP RECORDED SOUTH 89°59'43" EAST 151.40 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 21, SAID POINT BEING ON THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 1500.00 FEET AND WHOLE CENTER BEARS SOUTH 28°20'52" EAST FROM SAID POINT, SAID RADIUS MAKING AN ANGLE TO THE SOUTHEAST FROM THE SOUTH LINE OF SAID LOT 21 OF 61°29'08"; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°52'52" AN ARC DISTANCE OF 101.60 FEET TO THE END OF SAID CURVE; THENCE TANGENT TO SAID CURVE NORTH 65°32'00" EAST 85.45 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1000.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 41°15'00" AN ARC DISTANCE OF 719.95 FEET; THENCE TANGENT TO SAID CURVE NORTH 24°17'00" EAST 4353.23 FEET TO THE NORTH LINE OF BLOCK 29 OF SAID FLETCHER HILLS UNIT NO. 2.

ALSO EXCEPTING THE INTEREST AS CONVEYED IN THE CITY OF EL CAJON BY DEED RECORDED JUNE 25, 1973 AS INSTRUMENT NO. 73-0173469 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONDEMNED IN FEE BY THE SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD AND DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED JANUARY 14, 1994 AS INSTRUMENT NO. 94-0032012 OF OFFICIAL RECORDS AND AMENDED ORDER RECORDED FEBRUARY 28, 1994 AS INSTRUMENT NO. 94-0130978 OF OFFICIAL RECORDS.

THOSE PORTIONS OF LOTS 10 AND 11 IN BLOCK 28 OF FLETCHER HILLS UNIT NO. 2, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 2122, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 31, 1928 INCLUDED WITHIN THAT LAND PER DEED TO SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD (MTS LAND) RECORDED FEBRUARY 28, 1994 AS DOCUMENT NO. 1994-0130978 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID MTS LAND; THENCE ALONG THE WESTERLY LINE THEREOF NORTH 4°34'36" WEST (RECORD NORTH 4° 34'37" WEST) 281.06 FEET TO AN ANGLE POINT THEREIN; THENCE CONTINUING ALONG SAID WESTERLY LINE SOUTH 89°40'41" EAST (RECORD SOUTH 89°40'42" EAST 19.00 FEET); THENCE LEAVING SAID WESTERLY LINE SOUTH 0°42'04" EAST 280.08 FEET TO THE POINT OF BEGINNING.

**APN 482-190-52**

THAT CERTAIN REAL PROPERTY PURSUANT TO THE LOT LINE ADJUSTMENT NO. 207, AS DISCLOSED BY A DOCUMENT RECORDED JANUARY 21, 2000 AS INSTRUMENT NO. 2000-0033073 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EASTERLY 92.00 FEET OF WESTERLY 192.00 FEET OF LOTS 10 AND 11 IN BLOCK 28 OF FLETCHER HILLS UNIT NO. 2, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 2122, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 31, 1928.

EXCEPTING THEREFROM THE SOUTHERLY 110.00 FEET OF SAID LOT 11.

ALSO EXCEPTING THEREFROM THE NORTHERLY 32.51 FEET OF SAID LOT 10.

ALSO EXCEPTING THEREFROM THAT PORTION LYING WITHIN THAT CERTAIN 50.00 FOOT STRIP OF LAND DESCRIBED IN DEED TO THE CITY OF SAN DIEGO DATED MAY 21, 1946 AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AUGUST 19, 1946 IN BOOK 2214, PAGE 182 OF OFFICIAL RECORDS AS FOLLOWS:

ALL OF PORTIONS OF LOTS 8, 9, 10 AND 11 IN BLOCK 28 OF FLETCHER HILLS UNIT NO. 2, ACCORDING TO MAP THEREOF NO. 2122, LYING WITHIN A STRIP OF LAND 50.00 FEET IN WIDTH, BEING 33.00 FEET AT RIGHT ANGLES NORTHWESTERLY FROM AND 17.00 FEET AT RIGHT ANGLES SOUTHEASTERLY FROM A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF LOT 21 IN BLOCK 26 OF SAID FLETCHER HILLS UNIT NO. 2, DISTANT THEREON SOUTH 89°50'06" EAST MAP RECORD SOUTH 89°59'43" EAST 151.40 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 21, SAID POINT BEING ON THE ARC OF A CURVE CONCAVE TO THE

SOUTHEAST HAVING A RADIUS OF 1500.00 FEET AND WHOSE CENTER BEARS SOUTH 28°0'52" EAST FROM SAID POINT, SAID RADIUS MAKING AN ANGLE TO THE SOUTHEAST FROM THE SOUTH LINE OF SAID LOT 21 OF 61°29'08"; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°52'52" AN ARC DISTANCE OF 101.60 FEET TO THE END OF SAID CURVE; THENCE TANGENT TO SAID CURVE NORTH 65°32'00" EAST 85.45 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1500.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 41°15'00" AN ARC DISTANCE OF 719.95 FEET; THENCE TANGENT TO SAID CURVE NORTH 24°17'00" EAST 4353.23 FEET TO THE NORTH LINE OF BLOCK 29 OF SAID FLETCHER HILLS UNIT NO. 2.

A RIGHT OF WAY FOR INGRESS AND EGRESS AND OTHER USES AS SET FORTH IN SAID INSTRUMENT OVER THAT PARCEL CONVEYED TO THE CITY OF SAN DIEGO BY THE ED FLETCHER COMPANY ON AUGUST 19, 1946 IN BOOK 2214, PAGE 182 OF OFFICIAL RECORDS.



## **EXHIBIT "B"**

### **DESCRIPTION OF BENEFITED PUBLIC PROPERTIES IN EL CAJON**

City Hall, 200 Civic Center Way  
APN: 488-111-30

El Cajon Public Safety Building, 100 Civic Center Way  
APN: 488-072-42

Fire Station No. 6, 100 East Lexington Ave.  
APN: 488-192-09

Heartland Fire Training Facility, 1301 North Marshall Ave.  
APN: 482-131-16

Fletcher Hills Center and Pool, 2345 Center Place  
APN: 481-430-47 & 481-430-44

Hillside Center and Park, 840 Buena Terrace  
APN: 481-521-01 & 481-520-12

Judson Park, NW corner of Magnolia and Park Avenues  
APN: 487-172-67

Kennedy Center and Park, 1675 East Madison Avenue  
APN: 511-210-13

Renette Center and Park, 935 South Emerald Avenue  
APN: 492-320-01 & 492-320-02

Wells Center and Park, 1153 East Madison Avenue  
APN: 489-140-63

## EXHIBIT "C"

### CITY REIMBURSEMENT SCHEDULE

1. **Reimbursement Payments.** Starting in the first Operating Year, as defined below, following issuance of the Occupancy Permit as the item is defined in the Operating Covenant, and each Operating Year thereafter for the Term of the Operating Covenant, the City shall reimburse the Operator each year of the Operating Year in an amount equal to:

Seventy-five percent (75%) of the "Net Sales Taxes from the Site" generated on the Land during Operating Years 1 through 5, inclusive; and

Sixty percent (60%) of the "Net Sales Taxes from the Site" generated on the Land during Operating Years 6 through 10, inclusive.

(a) As used herein, the term "Net Sales Taxes from the Site" shall mean the "Sales Taxes From the Site" in excess of \$300,000 in each calendar year (the approximate current annual sales level), as defined below. Operating Year shall mean the first twelve (12) full months following the issuance of the Occupancy Permit (prorated for first year) and each subsequent twelve (12) full months the Operating Covenant is in place, and shall mean such calendar quarters as calculated by the State Board of Equalization.

(b) As used herein, the term "Sales Taxes from the Site" means the amount equal to the sales and use taxes that are generated from sales occurring on the Land on which sales or use taxes are imposed pursuant to applicable California law in each Operating Year, which are actually received by the City from the State Board of Equalization. In connection therewith:

(i) The Operator shall timely report, and shall cause its tenants (if any) to report all sales and use taxes from the Land to the State Board of Equalization in accordance with the laws, rules, and regulations applicable to such reporting.

(ii) Sales Taxes from the Site shall be deemed to have been paid by the State Board of Equalization to the City if and to the extent the State Board of Equalization elects to offset the payment of any such Sales Taxes From the Site against any other obligation of the City.

(iii) The Operator acknowledges that the State Board of Equalization makes payments to the City based on both actual and anticipated sales and use tax revenues and that the State Board of Equalization makes periodic reconciliations. The determination of Sales Taxes from the Site for any annual, quarterly, or other period shall be subject to the timing and reconciliation process related to the processing by the State Board of Equalization of payments of such Sales Taxes from the Site to the City. Any adjustments resulting from any interim or estimated determination of Sales Taxes From the Site for any annual, quarterly, or other period shall be reconciled by the parties as soon as practicable without inclusion of, or any obligation to pay, interest.

(iv) Sales Taxes From the Site shall be determined based on actual amounts received by the City based only on the City's share of the State sales and use tax applicable to the Land (which, as of the Effective Date, is 1.0% of the taxable amount) within each Operating Year. Sales Taxes From the Site shall not include amounts paid to the City by the State Board of Equalization derived from any sales tax overrides or special tax amounts received by the City, nor shall include any administrative fees or charges imposed by the State Board of Equalization that reduce the actual amounts of sales and use taxes received by the City.

(v) The Operator shall, and shall cause its tenants (if any) to, keep full and accurate books of account, records, and other pertinent data showing all gross income earned upon the Land that is reportable for California sales and use tax purposes, including all documents required to be maintained by the State of California for sales and use tax purposes.

(vi) The Operator shall furnish, and shall cause its tenants (if any) to furnish, to City true and correct photocopies of its quarterly California sales and use tax returns at the time each is filed with the State of California, together with a copy of all checks or wire transfers or other forms of transfer of funds sent for such payment of sales and use taxes.

2. **Reimbursement Prepayment.** The City shall have the right to prepay all or any portion of its obligations for reimbursement at any time without penalty.